

# FILE

2016 MAY 17 P 1:13

TIFFANY PHILLIPS  
FALL 1964

Case No. 13PO-CC00027

Defendant.

The Court has read Plaintiff's Petition for Injunctive Relief and Civil Penalties, in which Plaintiff alleges that Defendant violated the Missouri Clean Water Law. The Court is advised that the parties have consented to the terms in this Consent Judgment for settlement purposes only, and that their consent is conditioned upon the Court approving the Consent Judgment in its entirety. The Court is satisfied that the provisions of this Consent Judgment are intended to resolve the issues raised by the Petition and that the parties want to terminate this controversy and consent to the

entry of this judgment without trial. The Court retains jurisdiction over the matter in order to enforce each and every term of this Consent Judgment.

The parties hereto, having consented to the entry of this Consent Judgment, now therefore, before the taking of any testimony and upon the pleadings, it is hereby agreed that:

### **I. Objectives of the Parties**

1. The objectives of the parties to this Consent Judgment are to protect human health and the environment and to resolve allegations contained in Plaintiff's Petition.

### **II. Definitions**

2. Terms used herein shall have the same meaning as provided in 644 RSMo and the regulations adopted thereunder. In addition, the following terms are specifically defined:

a. "Consent Judgment" means this Consent Judgment and all attachments, which are included by reference and fully enforceable as a term of the judgment.

b. "Defendants" mean Dewey Smith.

c. "Department" means the Missouri Department of Natural Resources.

d. "Facility" means the 22-acre (m/l) tract north of Deer Meadows Subdivision as shown in Exhibit A to this consent judgment.

e. “Plaintiff” and “State” means the State of Missouri on the relationship of Attorney General Chris Koster and the Department.

### **III. Jurisdiction and Venue**

3. This Court has jurisdiction over the subject matter and the parties in this case pursuant to § 478.070 RSMo.<sup>1</sup> Venue is proper in this court pursuant to 319.127.1 RSMo, because the Defendants’ conduct giving rise to this action took place in Polk County.

### **IV. Parties Bound**

4. The provisions of this Judgment shall be binding upon the parties to this action as well as their heirs, successors, assigns.

5. Defendant shall provide a copy of this order to all persons or entities retained to perform work required by this order.

### **V. Satisfaction and Reservation of Rights**

6. Upon the completion of all terms of this Consent Judgment, including the payment of civil penalties, completion of all schedules of compliance and the payment of any stipulated penalties due under the terms of this Consent Judgment, Defendant is relieved of liability for the violations alleged in the petition.

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<sup>1</sup> All statutory references shall be to the Missouri Revised Statute 2000 unless specifically stated otherwise.

7. This Consent Judgment shall not be construed to limit the rights of the State to obtain penalties or injunctive relief under the Missouri Clean Water Law or its implementing regulations, or under other federal or state laws, or regulations, except as expressly stated in the preceding paragraph of this Consent Judgment. Without limiting the foregoing, the parties expressly agree that:

a. Nothing in this Consent Judgment shall prevent the State from applying to this Court for further orders or relief if violations of this Consent Judgment occur.

b. Nothing in this Consent Judgment shall preclude the State from seeking equitable or legal relief for future violations of Missouri Clean Water Law or violations of the Missouri Clean Water Law under investigation by the Department at the time of execution of this consent judgment.

c. The State of Missouri further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Defendant's facility, acts or omissions, whether related to the violations addressed in this Consent Judgment or otherwise.

## **VI. Injunctive Relief**

8. Defendant is ordered to comply with The Missouri Clean Water Law Chapter 644 RSMo and all implementing regulations for any and all future activities in the State of Missouri.

9. Within five months of entry of this Consent Judgment, Defendant expressly agrees to convey the following parcel of property: the north half of parcel number 89-11-0.8-34-000-000-004.03 to Russell Lee Sieck and the south half of parcel number 89-11-0.8-34-000-000-004.03 to Paul Lee and Lisbeth Gail Perez.

10. Within five months of entry of this Consent Judgment, Defendant expressly agrees to convey the following parcel of property to Don Axsom: parcel number 89-11-0.8-34-000-000-004.05.

11. Defendant agrees to make such transfers in whatever capacity (including but not limited to his individual capacity or in his capacity as trustee for the Dewey Smith Revocable trust) as is necessary to effectuate the transfers set forth in paragraphs 9 and 10.

12. Said transfers are made in order to provide for the efficient operation of the septic systems that were installed on lots in the facility by the Defendant in violation of Missouri Regulation 10 CSR 20-6.030(1)(D).

## **VII. Civil Penalty**

13. Defendant consents to the entry of judgment in favor of the State of Missouri for a civil penalty of \$8,500.00. Defendant hereby authorizes entry of this judgment against him and in favor of the State of Missouri for this sum.

14. Defendant agrees to pay the \$8,500.00 civil penalty within thirty (30) days of the Court's entry of this Consent Judgment.

15. The payment shall be made by submitting a check made payable to the "State of Missouri (Polk County)" to Collections Specialist, Missouri Attorney General's Office, P.O. Box 899, Jefferson City, MO 65102-0899.

### **VIII. Stipulated Penalties**

16. In the event that Defendant fails to comply with the requirements set forth in this Consent Judgment, Defendant shall be liable for stipulated penalties in accordance with the following schedule:

A. \$50.00 per day for each day of each violation up to thirty days.

B. \$100.00 per day for each day of each violation, from thirty-one days to sixty days.

C. \$150.00 per day for each day of each violation, beyond sixty days.

17. Stipulated penalties shall be due and payable within ten days of demand being made by the Attorney General's Office. Defendant shall pay

stipulated penalties by check made payable to the “*State of Missouri (Polk County)*” and mailed, along with a copy of the State’s stipulated penalty demand letter, to: Collections Specialist, Missouri Attorney General’s Office, P.O. Box 899, Jefferson City, MO 65102-0899. That check will be deposited and processed in accordance with the consent judgment and Missouri law.

18. The inclusion of stipulated penalty provisions in this Consent Judgment, and the payment of stipulated penalties, does not limit the State’s ability to pursue other penalties for the same acts; where a violation of this Consent Judgment also constitutes a violation of a statute, stipulated penalties may be collected in addition to statutory penalties imposed for those violations.

### **IX. Modification**

19. Except as otherwise specified herein, this Consent Judgment may be modified or amended only upon written agreement by and among the parties, their successors and assigns and with the approval of the Court. All modifications shall be in writing and filed with the Court.

### **X. Costs**

20. Defendant shall pay all court costs in this action.

The parties hereby consent to the entry of this Consent Judgment through their duly authorized representatives as indicated below.

By: Dewey J. Smith  
Dewey Smith

Title: \_\_\_\_\_

Date: 5-17-16

By: Dewey J. Smith NO  
Trustee, Dewey J. Smith  
Revocable Trust BAM

Title: \_\_\_\_\_

Date: 5-17-16

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By: Brook D. McCarrick  
Brook D. McCarrick  
Assistant Attorney General

Date: 5/16/16

MISSOURI DEPARTMENT OF NATURAL RESOURCES

By: Steven Fuller  
Deputy, Director  
Division of Environmental Quality

Date: 5/13/16

SO ORDERED.

[Signature]  
Circuit Judge

Date: 5/17/16

TOBIN, CHARLES R

ENDRIZI, JAM S JOHN

FRANCKA, EDITH

E 480TH RD

89-11-0.8-34-000-004.05

89-11-0.8-34-000-004.00

SMITH, DEWEY J & DORIS W

SMITH, DEWEY & DORIS (TRUST)

RENSHAW, RUSSELL J

89-11-0.8-34-000-007.15

CORNELL, IM

AXSOM, DON

89-11-0.8-34-000-004.06

HONEY, JASON & SARA

89-11-0.8-34-000-007.10

SIECK, RUSSELL LEE

89-11-0.8-34-000-004.02

ENDRIZI, JAMES JOHN

DIETRICH, JOSEPH L

89-11-0.8-34-000-007.13

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SMITH, DEWEY & DORIS (TRUST)

89-11-0.8-34-000-004.03

JENSEN, THOMAS A

89-11-0.8-34-000-007.14

PEREZ, PAUL LEE & LISBETH GAIL

89-11-0.8-34-000-004.01

CHOATE, DAVID

89-11-0.8-34-000-005.00

89-11-0.8-34-000-007.07

SLAGLE, JEREMY & BRANDY SCHMOCK, DENNIS

20

MURPHY, JOHN & LESA

89-11-0.8-34-000-007.01

KIFER, ROBERT E & BETTY (TRUST)

89-11-0.8-34-000-001.00

ALLARD, THELMA JUNE & ROBERT L

89-11-0.8-34-000-002.00

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